

The City of Pacifica approved the development on June 12, 2006. The City's final approval was appealed to the Commission and on August 10, 2006, the Commission found that the appeal raised substantial issues regarding the conformance of the approved blufftop development with the hazards policies of the LCP.

LCP issues raised by the proposed development include potential impacts to water quality related to construction activities and increased impervious surface coverage and geological hazards due to the location of the apartment complex on blufftop. Staff recommends that the Commission **approve** permit application A-2-PAC-06-007 with conditions to prevent impacts to water quality, minimize the risks of hazards, and prohibit future construction of seawalls, armoring or other structures on the bluff or beach to protect the permitted improvements from bluff or shoreline erosion and related hazards.

1.0 STAFF RECOMMENDATION ON CDP APPLICATION

The staff recommends conditional approval of Coastal Development Permit Application No. A-2-PAC-06-007.

Motion:

I move that the Commission approve Coastal Development Permit No. A-2-PAC-06-007 pursuant to the staff recommendation.

Staff Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittees or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittees to bind all future owners and possessors of the subject property to the terms and conditions.

Special Conditions

1. **Water Quality**

A. Construction Period Erosion and Sediment Control Plan. ***Prior to issuance of the coastal development permit,*** the applicants shall provide, for the review and written approval of the Executive Director, an Erosion Control Plan to reduce erosion and retain sediment on-site during construction. The plan shall be designed to minimize the potential sources of sediment, control the amount of runoff and its ability to carry sediment by diverting incoming flows and impeding internally generated flows, and retain sediment that is picked up on the project site through the use of sediment-capturing devices. The plan shall also limit application, generation, and migration of toxic substances, ensure the proper storage and disposal of toxic materials, and apply nutrients at rates necessary to establish and maintain vegetation without causing significant nutrient runoff to surface waters.

B. Post-Construction Drainage Plan. ***Prior to issuance of the coastal development permit,*** the applicants shall submit to the Executive Director for review and written approval, a Post-Construction Drainage Plan. The plan shall demonstrate that runoff from development authorized in this coastal development permit, including all roofs, parking spaces, and other impervious surfaces on the site shall be discharged to the City's storm drain system to avoid erosion on the site.

C. The applicant shall undertake development in accordance with Construction Period Erosion and Sediment Control Plan approved by the Executive Director. No proposed

changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicants acknowledge and agree that (i) the site may be subject to hazards from seismic activity and bluff retreat; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amount paid in settlement arising from any injury or damage due to such hazards.
3. Swimming Pool. *Prior to issuance of the coastal development permit*, the applicants shall submit to the Executive Director for review and written approval, plans for the construction of the outdoor swimming pool. The plans shall demonstrate that the pool will be constructed with double-walled concrete, drains, and a leakage detection system. The pool's drains shall also be connected to the City's sanitary system.
4. No Future Bluff or Cliff Protective Device.
 - A. By acceptance of this permit, the applicant agrees, on behalf of its self and all successors and assigns, that no protective device(s) that would alter the natural landforms of bluffs or cliffs shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-2-PAC-06-007, including, but not limited to, the pool, expanded clubhouse, and parking spaces, and any future improvements to such, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. For purposes of this condition, bluff shall be defined as set forth in Title 14, Section 13577 of the California Code of Regulations. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under LCP Policy 16.
 - B. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit if any government agency has ordered that the structures be abandoned or removed due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit or other authorization under the Coastal Act.

5. Deed Restriction. *Prior to the issuance of the coastal development permit*, the applicants shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicants' entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

2.0 FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

2.1 Project Location and Description

The Lands End Apartments were constructed in 1972 and are located on a bluff top in northern Pacifica at 100 Esplanade Avenue (Exhibit 1). Other apartment buildings/condominiums are located to the north and south of Lands End, Palmetto Avenue is to the east and the beach is to the west. The 9.3-acre site consists of 260 apartment units in eleven buildings and includes a 2,660 square-foot clubhouse, hot tub, and internal access roads and parking for residents and visitors (Exhibit 2). The site is designated as High Density Residential in the Pacifica Land Use Plan and zoned R-3/Coastal Zone (Multi-Family Residential/Coastal Zone).

The proposed development consists of construction of a 260 square-foot outdoor pool, expansion of an existing clubhouse by 580 square feet, and the addition of five parking spaces to an existing parking lot (Exhibit 3). The existing clubhouse and hot tub are located within the central western edge of the apartment complex. An internal access road and parking lot separates the clubhouse, hot tub and adjacent apartment buildings from the bluff edge. According to the site plans, the pool would be located east of the existing hot tub, approximately 200 feet from the bluff edge, the existing clubhouse is located approximately 160 feet inland of the bluff edge, and the new parking spaces would fill in an unpaved area within an existing parking lot located approximately 65 feet from the bluff edge (Exhibit 4). Both the proposed clubhouse expansion and pool would be located landward of existing development on the site. The five additional parking spaces would be located adjacent to existing spaces, but would protrude slightly seaward.

A coastal development permit is required for the proposed development because pursuant to Section 9-4.4303 of the LCP and Section 13253 of the Commission regulations, improvements to structures other than single-family residences and public works facilities located between the first public road and the sea that would result in 10 percent increase in internal floor area would require a coastal development permit. The proposed improvements to the clubhouse would be located between the first public road and the sea and would increase the floor area of the existing structure by more than 10 percent, and thus a coastal development permit is required. The proposed pool also requires a coastal development permit because the pool would be a new structure, unattached to any parts of an existing structure, and thus, would not be considered an

improvement to an existing structure.

2.2 LCP Consistency Analysis

Since the proposed development is located between the first public road and the sea, the standard of review is the City of Pacifica's LCP and the public access and recreation policies of the Coastal Act.

Public Access

Section 30604(c) of the Coastal Act requires that coastal development permits for development between the first public road and the sea contain a finding that the proposed development conforms with the public access and public recreation policies of the Coastal Act. Section 30211 of the Coastal Act prohibits development from interfering with the public's right of access to the sea where acquired through use or legislative authorization.

The proposed development would be located between Esplanade Avenue, the first public road, and the sea, and would thus be subject to the public access and recreation policies of the Coastal Act. Although no access to the beach or shoreline exists within the project site, as a condition of the original use permit issued by the City for the development of the apartment complex the applicant is required to maintain: (1) an adjacent public access stairway off Esplanade Avenue (Exhibit 2) which provides vertical access from the blufftop to the beach as well as; (2) a blufftop trail located west of the apartment complex within an existing public access and open space easement area. The proposed development would be located more than 300 feet north of the public access stairway within the private property of Lands End, and the equipment staging area would be located 250 feet away (Exhibit 5), also within the privately owned apartment complex. Neither the proposed development nor its construction process would affect public use of the stairway. In addition, the proposed development would expand the common recreational areas of the existing Lands End apartment complex without increasing the number of apartment units. As a result, the number of residents at Lands End would remain the same, and the proposed development would not generate increased public access demands. Because the proposed development and associated construction activities would be located on private property at least 250 feet away from the public access stairway and would not increase the demand for public access to the shoreline, the proposed development would not have any significant adverse impacts on existing public access. Therefore, the Commission finds that the proposed project is consistent with the public access and public recreation policies of the Coastal Act.

Water Quality

Pacifica LUP Policy 12 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where

feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Due to its proximity to the beach and the ocean, the proposed development has the potential to discharge polluted runoff from the project site directly into the ocean as a result of the construction process and the increase in impervious surfaces due to the expanded clubhouse, additional parking spaces, and other paved areas. For instance, during construction, bare soils could erode and sediment could be transported into coastal waters. The expanded clubhouse, parking space, and other paved areas would increase runoff due to the creation of additional impervious surface areas. This runoff could carry with it pollutants such as suspended solids, oil and grease, nutrients, and synthetic organic chemicals. Also, increases in the volume and/or velocity of runoff could increase the amount of sediment entering the ocean. All of these impacts could adversely affect the biological productivity and quality of coastal water.

Special Condition 1 addresses water quality impacts that may occur during the construction process. It requires the applicant to submit plans for erosion control that show how the transport and discharge of sediment and pollutants from the site would be avoided and minimized, thereby reducing potential impacts to the quality and biological productivity of coastal waters. In addition, **Special Condition 1** addresses post-construction drainage and requires that runoff from impervious areas be directed to the City's storm drain system. While under most circumstances Commission staff would recommend storm water to be retained and infiltrated on site through best management practices to protect water quality, on bluff top sites such as Lands End where bluff failure has been attributed to high ground water levels, the potential safety risks associated with retaining and treating runoff on site outweighs the water quality benefits.

The Commission finds that, as conditioned, impacts associated with erosion and runoff have been minimized so as to maintain the quality and biological productivity of coastal waters, and thus, the proposed development is consistent with the water quality protection policies of the LCP.

Geologic Stability and Hazards

Pacifica LUP Policy 26 states in relevant part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or

surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

...

The bluffs along the coast of Pacifica have a history of erosion. Storm waves and surface and sub-surface drainage have contributed to landslides, bluff erosion, and other geologically unstable conditions in the area. Thus, the proposed development would be located in an inherently hazardous region.

The proposed development would include the addition of five parking spaces to an existing parking lot that is located approximately 65 feet from the bluff edge. According to a 2001 study by Shires et al, average long-term bluff retreat in the northern Pacifica region is approximately two feet per year. However, bluff erosion in the project area also occurs episodically. In Brian Collin's doctoral dissertation (Collins, 2004), the author documented that the bluff in the project area retreated approximately 33 feet between December 2002 and January 2003 mainly due to erosion from wave action. Since the proposed parking spaces would only be 65 feet from the bluff edge, they would be at high risk of erosion, although the exact time when the development would be at risk could not be predicted due to the episodic nature of bluff erosion events.

Given the proximity of the proposed parking spaces to the bluff edge and the inherently hazardous nature of the project area, it is not possible to assure that the proposed accessory development would be protected during future storms, erosion, and/or landslides. Therefore, the Commission finds that the proposed project is subject to risk from erosion and that the applicant should assume the liability of such risk. The applicant may decide that the economic benefits of development outweigh the risk of harm, which may occur from the identified hazards. However, neither the Commission nor any other public agency that permits development should be held liable for the applicant's decision to develop. Therefore, the Commission imposes **Special Condition 2**, which requires the landowner to assume the risks of any losses associated with the proposed development due to seismic, geologic, and geotechnical hazards of the property, waive any claim of liability on the part of the Commission for such losses, and indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards.

In addition, the proposed development would include an outdoor swimming pool located on the blufftop. Collins' dissertation finds that the general mechanism of bluff failure in this area of Pacifica is driven largely by groundwater. Accordingly, any leakage of the pool could contribute to bluff failure which would be inconsistent with LUP Policy 26 that requires new development to minimize risks to life and property, assure stability and structural integrity and prohibits the project from creating or contributing to erosion, geologic instability, or destruction of the site and surrounding properties.

In order to ensure that the proposed pool would not leak and contribute to geologic instability, or increase risks to life and property, **Special Condition 4** requires that the applicant submit plans of the pool that demonstrate that the pool would be constructed of double-walled, reinforced concrete with drains and a leakage detection system. The pool's drains are required to be connected to the City's sanitary system to ensure that any chlorinated water that could overflow from the pool would not be discharged on site but would rather be collected and treated by the City's sewage treatment system. The Commission's staff geologist has reviewed these measures

and determined that they would be adequate to prevent leakage and ensure that the pool would not contribute to the geologic instability of the project area.

Moreover, because the proposed development would increase impervious surface area on site by expanding the clubhouse and adding five paved parking spaces, the additional storm water runoff from the increases in impervious surface areas could also contribute to the geologic instability of the project area. As such, **Special Condition 1** requires that storm water runoff from the proposed development be discharged to the City's storm drain system to prevent storm water from infiltrating on site and increasing the risk of bluff failure.

The Commission finds that as conditioned, the proposed development would not create or contribute significantly to erosion, geologic instability or destruction of the site or surrounding area, and would minimize risks to life and property in areas of high geologic hazard, consistent with LUP Policy 26.

Shoreline Protection

City of Pacifica's LUP Policy 16 states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

LUP Policy 26(2) requires new development to:

Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

As discussed above, the proposed parking spaces would be slightly seaward of the existing parking spaces, approximately 65 feet from the bluff edge. Due to the average two feet of documented bluff retreat per year in the project area and the fact that episodic bluff erosion events usually result in greater than average rate of bluff retreat, it is highly likely that the proposed parking spaces would be in danger from erosion triggering the need for some kind of protective device on the bluff or shoreline within 30 years or sooner, although geologists could not absolutely predict when the proposed development would be in danger from bluff erosion. Shoreline protective devices have significant adverse impacts on shoreline processes and could alter the natural landform of the bluff. LUP Policy 16 only allows the construction of shoreline protective devices to protect *existing* development, and LUP Policy 26 prohibits new development that would require the construction of protective devices that substantially alter natural landforms along bluffs and cliffs. The proposed development could not be approved as

consistent with Policies 16 and 26 of the Pacifica LCP if projected bluff retreat would necessitate the construction of a shoreline protective device to protect it.

In this case, the existing development was constructed in 1972 and consists of 11 apartment buildings, a clubhouse, hot tub, and internal access road. If this existing development is threatened in the future and there is no other way to protect this existing development, section 30235 of the Coastal Act and LUP Policy 16 of the certified LCP mandate that the Commission and/or certified local government approve the construction of a shoreline protective device to protect this existing development if such protective device is required and designed to eliminate or mitigate impacts on shoreline sand supply. In this instance, although much of the existing development is in a location where the Commission would not now authorize apartment buildings due to the threat of shoreline erosion, the newly proposed improvements to the existing apartment complex would primarily be located landward and adjacent of the existing development and do not require grading or other significant landform alteration. These proposed improvements will therefore not significantly contribute to the need for shoreline protection at the subject site. Seaward and adjacent portions of existing development would be threatened before or at the same time the proposed additions would be threatened. Furthermore, because the accessory improvements are not habitable and do not require grading or other significant landform alteration, there is a reasonable expectation of their removal at the time the improvements become endangered.

The Commission finds that the proposed development is consistent with the certified LCP only if it is conditioned to provide that shoreline protection will not be constructed. Thus, the Commission further finds that due to the inherently hazardous nature of this lot, the fact that no geology report can conclude with any degree of certainty that a geologic hazard does not exist, the fact that the approved development and its maintenance may cause future problems that were not anticipated, and because new development shall not engender the need for shoreline protective devices, it is necessary to attach **Special Condition 4** prohibiting the construction of seawalls and **Special Condition 2** requiring a waiver of liability.

Special Condition 4 prohibits the construction of shoreline protective devices in the future and requires the landowner to accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site, and to agree to remove the proposed development should the bluff retreat reach the point where a government agency has ordered that the proposed development be abandoned or removed. **Special Condition 4** also requires removal of all or a portion of the approved development if any portion of the approved development falls before it is removed. Additionally, **Special Condition 4** ensures that the proposed development would not require any shoreline protective devices that would alter the natural landform along cliffs and bluffs. As discussed above, Special Condition No. 2 requires the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Therefore, the Commission finds that as conditioned, the proposed development would be consistent with LUP Policies 16 and 26.

Deed Restriction

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

3.0 CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects which the activity may have on the environment.

The Commission incorporates its findings on Local Coastal Program consistency at this point as if set forth in full. As discussed above, as conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impacts which the development may have on the environment. Therefore, the Commission finds that the proposed project has been conditioned to mitigate the identified impacts and can be found consistent with Coastal Act requirements to conform to CEQA.

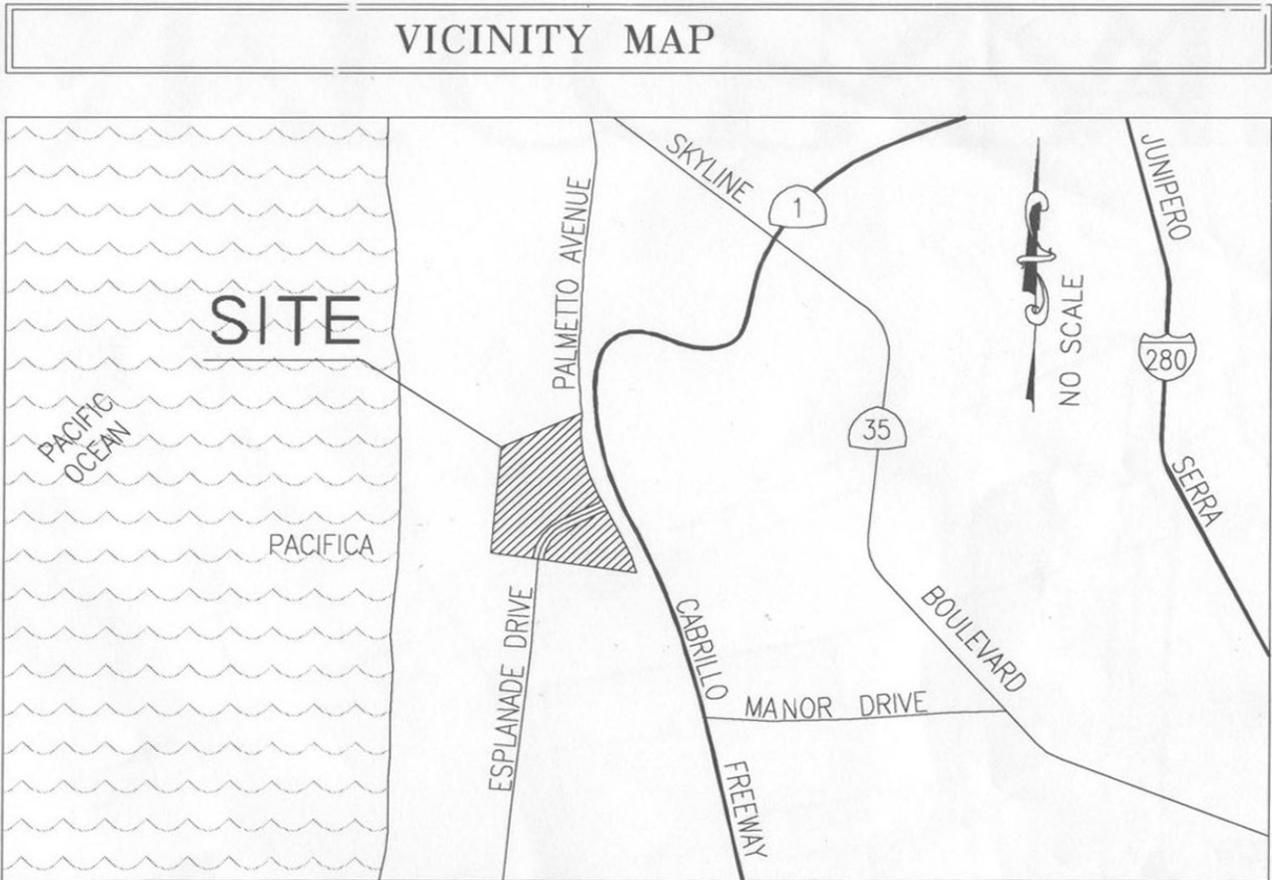
EXHIBITS

1. Project Location Map
2. Land End Apartment Complex Site Plan
3. Project Site Plans
4. Location of Bluff Edge in Relation to Proposed Development
5. Location of Staging Area

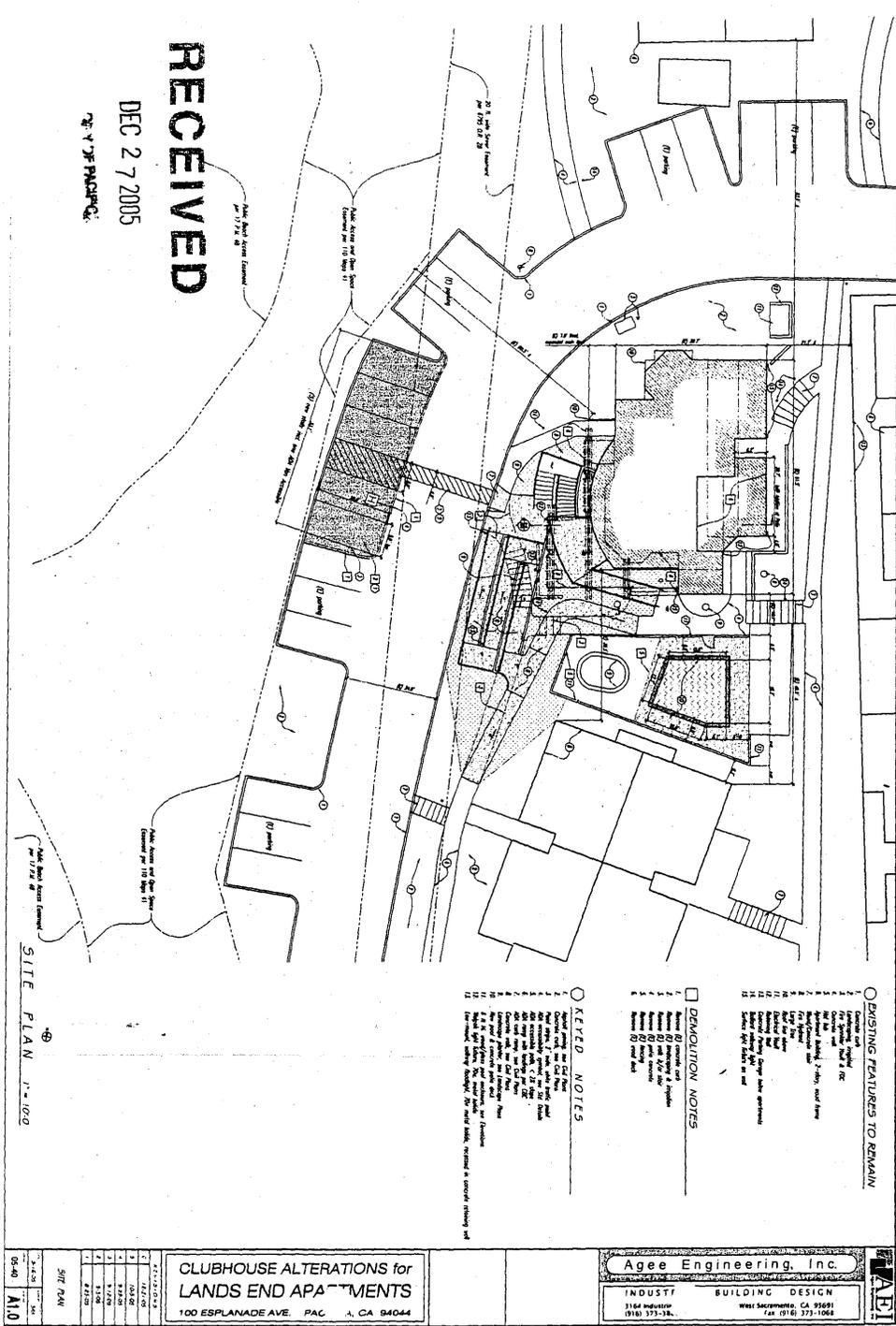
REFERECENCES

Collins, B.D., 2004, Failure mechanics of weakly lithified sand coastal bluff deposits (Ph.D. thesis), University of California, Berkeley.

Shires, Patrick, Ted Sayre and David Skelly, 2001, Mitigation of 1998 El Niño sea cliff failure, Pacifica, California, Engineering Geology Practice in Northern California, edited by Horacio Ferriz and Robert Anderson.



A-2-PAC-06-007
Lands End
Exhibit 1
Project Location Map



A-2-PAC-06-007
 Lands End
 Exhibit 3
 Project Site Plan

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5260
FAX (415) 904-5400

Th 10A



Prepared September 12, 2006 (for September 14, 2006 hearing)

To: Coastal Commissioners and Interested Persons

From: Charles Lester, Deputy Director
Chris Kern, District Manager

**Subject: STAFF REPORT ADDENDUM for Item Th10A
CDP No. A-2-PAC-06-007 (FBA/BAF Lands End Associates LP)**

The purpose of this addendum is to clarify that Special Condition 4 (No Future Bluff or Cliff Protective Device) applies only to the development authorized by this permit. Accordingly, staff recommends that the following sentence be added at the end of Special Condition 4A:

Acceptance of this permit shall not affect the applicant's rights, as defined by LCP Policy 16, to construct devices necessary to protect structures that pre-date this permit, even if such devices have the incidental effect of protecting the new development authorized by this permit.

As revised, Special Condition 4A would read:

4. No Future Bluff or Cliff Protective Device.

A. By acceptance of this permit, the applicant agrees, on behalf of its self and all successors and assigns, that no protective device(s) that would alter the natural landforms of bluffs or cliffs shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-2-PAC-06-007, including, but not limited to, the pool, expanded clubhouse, and parking spaces, and any future improvements to such, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. For purposes of this condition, bluff shall be defined as set forth in Title 14, Section 13577 of the California Code of Regulations. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under LCP Policy 16. Acceptance of this permit shall not affect the applicant's rights, as defined by LCP Policy 16, to construct devices necessary to protect structures that pre-date this permit, even if such devices have the incidental effect of protecting the new development authorized by this permit.

BART WILLOUGHBY

Th 10a

September 11, 2006

Sent Via Facsimile to: (415) 904.5400

Ms. Yinland Zhang
Coastal Analyst
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94150-2219

Re: De Novo Hearing, September 14, 2006
FPA/BAF Lands End Associates, L.P. (A-2-PAC-06-007)

Dear Ms. Zhang:

RECEIVED

SEP 12 2006

CALIFORNIA
COASTAL COMMISSIONRequest for Postponement for Good Cause

Appellant, Bart Willoughby seeks temporary postponement of the Commission Hearing set for September 14, 2006, regarding the De Novo Hearing referenced above for good cause.

New developments have surfaced regarding the Applicant FPA/BAF Lands End Associates, L.P. ("Applicant") by binding and legal agreement. Recorded in the Official Records of San Mateo County on June 30, 2005, between the Applicant and Wells Fargo Bank, National Association ("Wells Fargo") entitled: *Construction Deed of Trust With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing Document Number 2005-109943 (18) Pages*. Attached is a true and correct copy of the document.

I direct the Commission's attention to Page 8 of 18 known as Article 5.7 Maintenance and Preservation of the Subject Property. Specifically, Subdivisions (c) and (g). The Applicant must have PRIOR written approval from Wells Fargo before accepting any conditions that would affect the subject property and requires the Applicant to Preserve the Value of the Property.

Before the Applicant can accept the conditions as recommended in the Staff Report dated August 26, 2006, the Applicant should demonstrate to the Commission that the Applicant has secured the required Written Approval from Wells Fargo before proceeding further. Moreover, that Wells Fargo be given adequate notice of the contents of the Staff Report dated August 26, 2006 and the opportunity to respond if necessary.

Very truly yours,



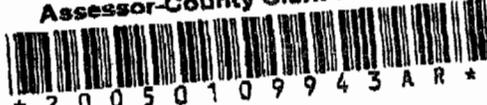
Bart Willoughby

*First American Title
205 165684-CL*

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

WELLS FARGO BANK, NATIONAL
ASSOCIATION
Real Estate Merchant Banking (AU# 02034)
186 Placerville Drive
Placerville, CA 95667

Attn: Ms. Robin Dixon
Loan No.: 102187

2005-109943
02:23pm 06/30/05 DT A2 AG... Fee: 79.00
Count of pages 18
Recorded in Official Records
County of San Mateo
Warren Slocum
Assessor-County Clerk-Recorder

* 2 0 0 5 0 1 0 9 9 4 3 A R *

THIS DEED OF TRUST SECURES A NOTE WHICH PROVIDES FOR A VARIABLE INTEREST RATE

**CONSTRUCTION DEED OF TRUST
WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

188

THE PARTIES TO THIS CONSTRUCTION DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust"), made as of June 30, 2005, are FPA/BAF LANDS END ASSOCIATES, L.P., a California limited partnership ("Trustor"), AMERICAN SECURITIES COMPANY, a California corporation ("Trustee"), and Wells Fargo Bank, National Association ("Beneficiary").

ARTICLE 1. GRANT IN TRUST

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of that real property located in the City of Pacifica, County of San Mateo, State of California, described on Exhibit A attached hereto, together with all right, title, interest, and privileges of Trustor in and to all streets, ways, roads, and alleys used in connection with or pertaining to such real property, all development rights or credits, air rights, water, water rights and water stock related to the real property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all appurtenances, easements, rights and rights of way appurtenant or related thereto; all buildings, other improvements and fixtures now or hereafter located on the real property, including, but not limited to, all apparatus, equipment, and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real property (the "Improvements"); all warrants, stock options or similar rights owned by Trustor or any of its affiliates in and to any Tenant, or any licensee or any other Person providing services related to or for the benefit of the Property, or any affiliates thereof; deposits, security deposits, letters of credit, lease bonds and other deposit substitutes, credit enhancements and other like items under or with respect to any Lease of any portion of the Property; all interest or estate which Trustor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing; (all of the foregoing being collectively referred to as the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms.
- 1.2 **ADDRESS.** The address of the Subject Property (if known) is: 100 and 101 Esplanade Avenue, Pacifica, California. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Deed of Trust on the Subject Property as described on Exhibit A.

Loan No. 102187

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Trustor makes this Deed of Trust for the purpose of securing the following obligations ("Secured Obligations"):
- (a) Payment to Beneficiary of all sums at any time owing under that certain Promissory Note ("Note") of even date herewith, in the principal amount of THIRTY-ONE MILLION AND NO/100THS DOLLARS (\$31,000,000.00) executed by Trustor, as Borrower, and payable to the order of Beneficiary, as lender; and
 - (b) Payment and performance of all covenants and obligations of Trustor under this Deed of Trust; and
 - (c) Payment and performance of all covenants and obligations on the part of Borrower under that certain Loan and Security Agreement ("Loan Agreement") of even date herewith by and between Borrower and Beneficiary, as lender; and
 - (d) Payment and performance of all covenants and obligations, if any, of any rider attached as an Exhibit to this Deed of Trust; and
 - (e) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Deed of Trust;
 - (f) Payment and performance of all covenants and obligations of Trustor under that certain Swap Confirmation dated as of June 29, 2005, executed by and between Trustor and Beneficiary, which agreement is evidenced by a writing which recites that it is secured by this Deed of Trust; and
 - (g) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.
- 2.2 **OBLIGATIONS.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.
- 2.3 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Trustor hereby irrevocably assigns to Beneficiary all of Trustor's right, title and interest in, to and under: (a) all leases of the Subject Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Subject Property or any portion thereof, whether now existing or entered into after the date hereof ("Leases"); and (b) the rents, revenue, income, issues, deposits security deposits, letters of credit, lease bonds and other deposit substitutes or credit enhancements and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases, and all deposits, security deposits, letters of credit, lease bonds and other deposit

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substitutes, or credit enhancements ("Payments"). The term "Leases" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Subject Property.

- 3.2 GRANT OF LICENSE.** Beneficiary confers upon Trustor a license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to Section 6.4 without notice and without taking possession of the Subject Property. Trustor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary.
- 3.3 EFFECT OF ASSIGNMENT.** The foregoing Irrevocable assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Subject Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Subject Property; or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person. Beneficiary and Trustor shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise or failure to exercise by Beneficiary or Trustor, or any of their respective employees, agents, contractors or subcontractors, any of the rights, remedies or powers granted to Beneficiary or Trustor hereunder; or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.
- 3.4 REPRESENTATIONS AND WARRANTIES.** Trustor represents and warrants that to Trustor's knowledge: (a) the certified rent roll delivered to Beneficiary is, as of the date hereof, a true, accurate and complete list of all Leases; (b) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms; (c) no rent or other payment under any existing Lease has been paid by any lessee for more than one (1) month in advance, except as otherwise noted on the certified rent roll delivered by Trustor to Beneficiary; and (d) none of the lessor's interests under any of the Leases has been transferred or assigned.
- 3.5 COVENANTS.** Trustor covenants and agrees at Trustor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases and use commercially reasonable efforts to enforce performance by the lessees of the obligations of the lessees contained in the Leases; (b) intentionally omitted; (c) exercise Trustor's best efforts to keep all portions of the Subject Property that are capable of being leased at all times at rentals not less than the fair market rental value; and (d) deliver to Beneficiary fully executed, counterpart original(s) of each and every Lease if requested to do so. Trustor shall not, without Beneficiary's prior written consent or as otherwise permitted by any provision of the Loan Agreement: (i) intentionally omitted; (ii) execute any other assignment relating to any of the Leases; (iii) collect any rent or other sums due under the Leases in advance, other than to collect rentals one (1) month in advance of the time when it becomes due; (iv) intentionally omitted; (v) intentionally omitted; or (vi) subordinate or agree to subordinate any of the Leases to any other deed of trust or encumbrance. Any such attempted action in violation of the provisions of this Section 3.5 shall be null and void. Without in any way limiting the requirement of Beneficiary's consent hereunder, any sums received by Trustor in consideration of any termination (or the release or discharge of any lessee) modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Trustor shall be held in trust by Trustor for such purpose.

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ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Trustor hereby grants and assigns to Beneficiary as of the "Effective Date" (defined in the Loan Agreement) a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Trustor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on (i) the real property described on Exhibit A attached hereto and incorporated by reference herein (to the extent the same are not effectively made a part of the real property) or (ii) any existing or future improvements on the real property (which real property and improvements are collectively referred to herein as the "Subject Property"); together with all rents (to the extent, if any, they are not subject to Article 3) and security deposits derived from the Subject Property; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or deposition of the Subject Property or any business now or hereafter conducted thereon by Trustor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Subject Property, or any of their affiliates; all warrants, stock options or similar rights owned by Trustor in and to any Tenant, any licensee or any other Person providing services related to or for the benefit of the Property, or any of their affiliates; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Subject Property, whether decreed or undeclared, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Subject Property; all advance payments of insurance premiums made by Trustor with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any loan agreement; all reserves, deferred payments, deposits, security deposits, letters of credit, lease bonds and other deposit substitutes, credit enhancements, other like items, accounts, refunds, cost savings and payments of any kind related to the Subject Property or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the California Uniform Commercial Code, as amended or recodified from time to time ("UCC"), and is acknowledged and agreed to be a "construction mortgage" under the UCC.

- 4.2 **REPRESENTATIONS AND WARRANTIES.** Trustor represents and warrants that: (a) Trustor has, or will have, good title to the Collateral; (b) Trustor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; (c) Trustor's principal place of business is located at the address shown in Section 7.11; and (d) Trustor's legal name is exactly as set forth on the first page of this Deed of Trust and all of Trustor's organizational documents or agreements delivered to Beneficiary are complete and accurate in every respect.

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- 4.3 COVENANTS.** Trustor agrees: (a) to execute and deliver such documents as Beneficiary deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Beneficiary prior written notice thereof; (c) to cooperate with Beneficiary in perfecting all security interests granted herein and in obtaining such agreements from third parties as Beneficiary deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder; and (d) that Beneficiary is authorized to file financing statements in the name of Trustor to perfect Beneficiary's security interest in Collateral.
- 4.4 RIGHTS OF BENEFICIARY.** In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under UCC §9620, or other applicable law.
- 4.5 RIGHTS OF BENEFICIARY ON DEFAULT.** Upon the occurrence of a Default (hereinafter defined) under this Deed of Trust, then in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law:
- (a) Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell, lease, license and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales; and
 - (b) Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell, lease, license or dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral; and
 - (c) In disposing of Collateral hereunder, Beneficiary may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any disposition of any Collateral may be applied by Beneficiary to the payment of expenses incurred by Beneficiary in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by Beneficiary toward the payment of the Secured Obligations in such order of application as Beneficiary may from time to time elect.
- Notwithstanding any other provision hereof, Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Trustor shall make an express written election of said remedy under UCC §9620, or other applicable law. Trustor agrees that Beneficiary shall have no obligation to process or prepare any Collateral for sale or other disposition.
- 4.6 POWER OF ATTORNEY.** Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing

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statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

- 4.7 **POSSESSION AND USE OF COLLATERAL.** Except as otherwise provided in this Section or the other Loan Documents (as defined in the Loan Agreement), so long as no Default exists under this Deed of Trust or any of the Loan Documents, Trustor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Trustor's business and in accordance with the Loan Agreement.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **TITLE.** Trustor represents and warrants that, except as disclosed to Beneficiary in a writing which refers to this warranty, Trustor lawfully holds and possesses fee simple title to the Subject Property without limitation on the right to encumber, and that this Deed of Trust is a first and prior lien on the Subject Property.
- 5.2 **TAXES AND ASSESSMENTS.** Subject to Trustor's rights to contest payment of taxes as may be provided in the Loan Agreement, Trustor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein. Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided, however, Trustor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income.
- 5.3 **TAX AND INSURANCE IMPOUNDS.** At any time following the occurrence and during the continuance of a Default, at Beneficiary's option and upon its demand, Trustor, shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (a) all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property or Collateral and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, hazard and insurance required or requested pursuant to the Loan Documents when same are next due. If Beneficiary determines that any amounts paid by Trustor are insufficient for the payment in full of such taxes, assessments, levies, charges and/or insurance premiums, Beneficiary shall notify Trustor of the increased amounts required to pay all amounts when due, whereupon Trustor shall pay to Beneficiary within thirty (30) days thereafter the additional amount as stated in Beneficiary's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Beneficiary shall, unless Trustor is otherwise in Default hereunder or under any Loan Document, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Trustor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon Default by Trustor hereunder or under any Secured Obligation, Beneficiary may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Trustor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its Immediately following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Beneficiary may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Trustor and no other party shall have any right or claim thereto.
- 5.4 **PERFORMANCE OF SECURED OBLIGATIONS.** Trustor shall promptly pay and perform each Secured Obligation when due.

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5.5 LIENS, ENCUMBRANCES AND CHARGES. Trustor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust. Subject to the provisions of the Loan Agreement regarding mechanics' liens, Trustor shall pay when due all obligations secured by or which may become liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Subject Property or Collateral, or any interest therein, whether senior or subordinate hereto.

5.6 DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.

- (a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary, shall be paid directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property or Collateral; (iii) all proceeds of any insurance policies (whether or not expressly required by Beneficiary to be maintained by Trustor, including, but not limited to, earthquake insurance and terrorism insurance, if any) payable by reason of loss sustained to all or any part of the Subject Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in Section 5.7(d), Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose, and/or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, except to the extent the cause of such failure was the bad faith or willful misconduct by Beneficiary or its employees or agents.
- (b) Notwithstanding the provisions of Section 5.6(a), Beneficiary shall permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration. However, if such proceeds exceed One Million Dollars (\$1,000,000), Beneficiary may condition such application upon the following conditions: (i) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period, to the extent of any shortfall in income from the Property during such repair or restoration, including, without limitation, from rental or business interruption insurance proceeds); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be reasonably acceptable to Beneficiary; and (iv) the delivery to Beneficiary of evidence acceptable to Beneficiary (aa) that after completion of the work the income from the Subject Property will be sufficient to pay all expenses and debt service for the Subject Property (including, without limitation, from rental or business interruption insurance proceeds); (bb) intentionally omitted; (cc) intentionally omitted; (dd) that there has been no material adverse change in the financial condition or credit of Trustor since the date of this Deed of Trust (except resulting from such casualty or condemnation); and (ee) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Beneficiary of such insurance or condemnation proceeds, then Beneficiary may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose.

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- 5.7 MAINTENANCE AND PRESERVATION OF THE SUBJECT PROPERTY.** Subject to the provisions of the Loan Agreement, Trustor covenants: (a) to insure the Subject Property and Collateral against such risks as Beneficiary may require and, at Beneficiary's request, to provide evidence of such insurance to Beneficiary, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Subject Property and Collateral in good condition and repair; (c) not to remove or demolish the Subject Property or Collateral or any part thereof, not to alter, restore or add to the Subject Property or Collateral and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property without Beneficiary's prior written consent or as provided in the Loan Agreement; (d) to complete or restore promptly and in good and workmanlike manner the Subject Property and Collateral, or any part thereof which may be damaged or destroyed, without regard to whether Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in Section 5.6; (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Subject Property or Collateral; and (g) to do all other commercially reasonable acts which from the character or use of the Subject Property or Collateral may be necessary to maintain and preserve its value.
- 5.8 DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Trustor's sole expense, Trustor shall protect, preserve and defend the Subject Property and Collateral and title to and right of possession of the Subject Property and Collateral, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any material claim, of the filing of any action or proceeding, of the occurrence of any material damage to the Subject Property or Collateral and of any condemnation offer or action.
- 5.9 ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE.**
- (a) Trustee accepts this trust when this Deed of Trust is recorded. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies.
 - (b) Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.
 - (c) With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any

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circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Subject Property for debts contracted for or liability or damages incurred in the management or operation of the Subject Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. **TRUSTOR WILL, FROM TIME TO TIME, PAY THE COMPENSATION DUE TO TRUSTEE HEREUNDER AND REIMBURSE TRUSTEE FOR, AND INDEMNIFY AND HOLD HARMLESS TRUSTEE AGAINST, ANY AND ALL LIABILITY AND EXPENSES WHICH MAY BE INCURRED BY TRUSTEE IN THE PERFORMANCE OF TRUSTEE'S DUTIES.**

- (d) All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.
- (e) Should any deed, conveyance, or instrument of any nature be required from Trustor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Trustor.
- (f) By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee pursuant to the Loan Documents, including without limitation, any deed, conveyance, instrument, officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Trustee shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee.

5.10 COMPENSATION; EXCULPATION; INDEMNIFICATION.

- (a) Trustor shall pay Trustee's fees and reimburse Trustee for expenses in the administration of this trust, including attorneys' fees. Trustor shall pay to Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including without limit any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Subject Property or Collateral or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure (whether by malfeasance, nonfeasance or refusal to act) to lease the Subject Property after a Default (hereinafter defined) or from any other act or omission (regardless of whether same constitutes negligence) of Beneficiary in managing the Subject Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.
- (b) **TRUSTOR INDEMNIFIES TRUSTEE AND BENEFICIARY AGAINST, AND HOLDS TRUSTEE AND BENEFICIARY HARMLESS FROM, ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER**

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EXPENSES WHICH EITHER MAY SUFFER OR INCUR: (i) BY REASON OF THIS DEED OF TRUST; (ii) BY REASON OF THE EXECUTION OF THIS DEED OF TRUST OR IN PERFORMANCE OF ANY ACT REQUIRED OR PERMITTED HEREUNDER OR BY LAW; (iii) AS A RESULT OF ANY FAILURE OF TRUSTOR TO PERFORM TRUSTOR'S OBLIGATIONS; OR (iv) BY REASON OF ANY ALLEGED OBLIGATION OR UNDERTAKING ON BENEFICIARY'S PART TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS OF TRUSTOR CONTAINED IN ANY OTHER DOCUMENT RELATED TO THE SUBJECT PROPERTY. THE ABOVE OBLIGATION OF TRUSTOR TO INDEMNIFY AND HOLD HARMLESS TRUSTEE AND BENEFICIARY SHALL SURVIVE THE RELEASE AND CANCELLATION OF THE SECURED OBLIGATIONS AND THE RELEASE AND RECONVEYANCE OR PARTIAL RELEASE AND RECONVEYANCE OF THIS DEED OF TRUST.

- (c) Trustor shall pay all amounts and indebtedness arising under this Section 5.10 immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein.
- 5.11 **SUBSTITUTION OF TRUSTEES.** From time to time, by a writing, signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Subject Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section 5.11 shall be conclusive proof of the proper substitution of such new Trustee.
- 5.12 **DUE ON SALE OR ENCUMBRANCE.** If the Subject Property or any interest therein shall be sold, transferred (including, without limitation, through sale or transfer of a majority or controlling interest of the corporate stock or general partnership interests or limited liability company interests of Trustor), mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, in violation of the provisions of the Loan Agreement or any other Loan Document without the prior written consent of Beneficiary (if such consent is required by the Loan Agreement or any other Loan Document), THEN Beneficiary, in its sole discretion, may declare all Secured Obligations immediately due and payable.
- 5.13 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property and Collateral or in any manner obligated under the Secured Obligations ("Interested Parties"), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Subject Property and Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Deed of Trust upon the Subject Property and Collateral.
- 5.14 **RECONVEYANCE.** Upon Beneficiary's written request, and upon surrender to Trustee for cancellation of this Deed of Trust or a certified copy thereof and any note, instrument, or instruments setting forth all obligations secured hereby, Trustee shall reconvey, without warranty, the Subject Property or that portion thereof then held hereunder. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto" and the recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Subject Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Subject Property to the person or persons legally entitled thereto.

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- 5.15 **SUBROGATION.** Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to the Loan Documents or by the proceeds of any loan secured by this Deed of Trust.
- 5.16 **RIGHT OF INSPECTION.** Beneficiary, its agents and employees, may, upon reasonable prior notice to Trustor, enter the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and Collateral and ascertaining Trustor's compliance with the terms hereof.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term "Default" shall mean the existence of any Default as defined in the Loan Agreement.
- 6.2 **RIGHTS AND REMEDIES.** At any time after Default, Beneficiary and Trustee shall each have all the following rights and remedies:
- (a) With or without notice, to declare all Secured Obligations immediately due and payable;
 - (b) With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Trustor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons.
 - (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;
 - (d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment;
 - (e) To enter upon, possess, manage and operate the Subject Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Subject Property, to make, terminate, enforce or modify Leases of the Subject Property upon such terms and conditions as Beneficiary deems proper, to make repairs, alterations and improvements to the Subject Property as necessary, in Trustee's or Beneficiary's sole judgment, to protect or enhance the security hereof;
 - (f) To execute a written notice of such Default and of its election to cause the Subject Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by

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law, shall sell the Subject Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Subject Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Subject Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Subject Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustor or Beneficiary may purchase at the sale;

- (g) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Beneficiary, or either of them, determine in their sole discretion.
- (h) Upon sale of the Subject Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Subject Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Trustor and Beneficiary; and (z) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Subject Property.

- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** After deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.
- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Beneficiary under Section 6.2 or Section 3.2, less all costs and expenses incurred by Beneficiary or any receiver under Section 6.2 or Section 3.2, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as

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Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.

- 6.5 **NO CURE OR WAIVER.** Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Subject Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of or security interests created by this Deed of Trust.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Trustor agrees to pay to Beneficiary immediately and without demand all costs and expenses incurred by Trustee and Beneficiary pursuant to Section 6.2 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein. In addition, Trustor shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any attorneys' fees.
- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance of a deed pursuant to the foreclosure of the lien of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Subject Property and Collateral, Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Subject Property and Collateral, and (d) upon the occurrence of a Default, Beneficiary may perform any obligation of Trustor hereunder; provided, however, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act (whether such failure constitutes negligence) by Beneficiary under this Section.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Subject Property and Collateral and such further rights and agreements are incorporated herein by this reference.
- 7.2 **MERGER.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary consents to a merger in writing.
- 7.3 **OBLIGATIONS OF TRUSTOR, JOINT AND SEVERAL.** If more than one person has executed this Deed of Trust as "Trustor", the obligations of all such persons hereunder shall be joint and several.
- 7.4 **RECOURSE TO SEPARATE PROPERTY.** Any married person who executes this Deed of Trust as a Trustor agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected

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by execution upon that person's separate property, and any community property of which that person is a manager.

- 7.5 **WAIVER OF MARSHALLING RIGHTS.** Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Subject Property and Collateral, hereby waives all rights to have the Subject Property and Collateral and/or any other property, which is now or later may be security for any Secured Obligation ("Other Property") marshalled upon any foreclosure of the lien of this Deed of Trust or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.
- 7.6 **RULES OF CONSTRUCTION.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Subject Property" and "Collateral" means all and any part of the Subject Property and Collateral, respectively, and any interest in the Subject Property and Collateral, respectively.
- 7.7 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section 7.7 does not waive or modify the provisions of Section 5.12.
- 7.8 **EXECUTION IN COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.
- 7.9 **CALIFORNIA LAW.** This Deed of Trust shall be construed in accordance with the laws of the State of California, except to the extent that federal laws preempt the laws of the State of California.
- 7.10 **INCORPORATION.** Exhibit A, as attached, is incorporated into this Deed of Trust by this reference.
- 7.11 **NOTICES.** All notices, demands or other communications required or permitted to be given pursuant to the provisions of this Deed of Trust shall be in writing and shall be considered as property given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the address set forth below; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

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COASTAL COMMISSION

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IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

"TRUSTOR"

FPA/BAF LANDS END ASSOCIATES, L.P., a California
limited partnership

By: GF LANDS END, LLC, a California limited liability
company

Its: General Partner

By: _____

Gregory A. Fowler

Its: Manager

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

EXHIBIT A
Loan No. 102187

DESCRIPTION OF SUBJECT PROPERTY

Exhibit A to Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by FPA/BAF LANDS END ASSOCIATES, L.P., as Trustor to AMERICAN SECURITIES COMPANY, as Trustee for the benefit of Wells Fargo Bank, National Association, as Beneficiary, dated as of June 30, 2005.

All the certain real property located in the City of Pacifica, County of San Mateo, State of California, described as follows:

All that certain real property lying within the exterior boundaries of that certain map entitled "Reversion To Acreage, Being A Reversion To Acreage Of That Certain Subdivision Known As 'Points West - A Condominium', As Shown On That Certain Map Recorded In Volume 110 Of Maps At Pages 41 Through 53, City of Pacifica, San Mateo County, California", which map was filed in the Office of the Recorder of the County of San Mateo, State of California on May 18, 1989, in Book 119 of Maps at Pages 99 and 100.

Excepting any portion of the land which may lie westerly of the line of ordinary high water mark of the Pacific Ocean.

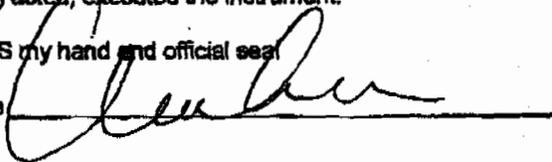
APN: 009-023-070-7 and 009-024-010-2

STATE OF CALIFORNIA
COUNTY OF MARIN ss.

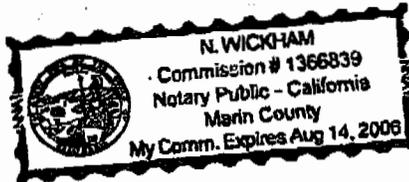
On this 23 day of June, 2005, before me, N. WICKHAM
a Notary Public in and for the State of California, personally appeared GREGORY A. FOWLER
personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature



My commission expires _____



To: Chris Kern
California Coastal Commission
North Central Coast District
45 Fremont, Suite 2000
San Francisco, CA 94105-2219
ckern@coastal.ca.gov

Th 10a

Hearing Date: September 14, 2006
Application No. A-2-PAC-06-007
Applicant: FPA/BAF Lands End Associates LP
Local Decision: Approval with Conditions
Project Location: 100 Esplanade Avenue, Pacifica (San Mateo Co.), APN's 009-023-070

and 009-024-010

Project Description: Construction of outdoor pool, expansion of existing clubhouse and

Addition of five parking spaces.

Appellant: Bart Willoughby

Staff Recommendation: Approval with Conditions

To Whom It May Concern:

I hereby ask that the California Coastal Commission DENY this application on the following grounds:

1. There has been no environmental impact to determine what impact to wildlife on this terrain would be affected by this construction.
2. There are no scientific or formal reports from United States Geological Survey (USGS) on the vulnerability of what this extra constructive weight would be to the bluff or what damages could occur to the California Coastline due to this construction.
3. No mention is made in all the reports filed with the Coastal Commission with regard to affects of seismic activity in the area which would be impacted by this construction. What would the USGS Seismic team think of this project and have they even been notified of these proceedings. This could cause major damages to the environment, the residents, the wildlife and the entire bluff/coastline. Any extra weight from construction would have more serious affects and should be studied, evaluated and reports given to the Coastal Commission before a decision is made on these issues. The roadway would sustain paramount damages due to a sudden breach in the pool from even

small and shallow seismic activity. The activity in this region has gotten much strong and more frequent in the recent years. This sudden water gush would most likely cause environmental damages, human loss of life or physical harm to people enjoying the coastline and this pool water could rapidly accelerate the erosion on the bluff due to the large rapid volume of water from above.

4. Expansion of existing clubhouse would cause Fowler Properties/Lands End to cut trees down to accommodate this construction and damaged the present environment which presently protections the complex. To my knowledge they have cut trees down with no permits from the City, State or Coastal Commission and thus are in violation of both City and State laws.

5. I have witnessed their construction crews for over five months and on a almost daily basis they show no regards with use of water and allow outside water faucets to drip for over four days continuously, water has flowed over the entire weekend from the hallway all the way to the drainage area and down the steps and into the groundwater. No testing has been done and they are constantly using pesticides on the grass which seeps into the groundwater and onto the beach with no regard for the safety of the residents, the coastline or the wildlife on this bluff. I have personally witnessed construction runoff water flowing down to the beach which has been exposed to harmful chemicals from the present construction/remodelling and this is toxic to the environmental waters. The volume isn't much but they show no regard to the environment, residents or wildlife safety whatsoever. I am most concerned with the chemical pesticides they are using presently and how it can affect humans as well as wildlife over a long period of exposure.

I deplore you to seek further information from USGS and demand a full environmental impact report on the affects this construction could have on the bluff, the residents, the community, the coastline and more importantly the wildlife who call this bluff their home.

Please attached these comments to the report and send a copy to all the commissioners for their consideration before the meeting so they can fairly have these considerations before a vote is taken on this application.

Concerned California Resident,

Joan Culver

Joan Culver
Resident at Lands End Apartments, Pacifica, CA
650-355-3770 Home - 415-783-5623 Office

September 4, 2006

Th 10a

California Coastal Commission
North Central Coast District Office
45 Fremont, Suite 2000
San Francisco, CA 94105-323129

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CALIFORNIA
COASTAL COMMISSION

Julia Miller
1611 New Brunswick Avenue
Sunnyvale, CA 94087

RE: Permit Number A-2-PAC-06-007

Applicants: Lands End Apartments
F.P.A./B.A./F. Lands End Associates
100 Esplanade, Pacifica

Dear Honorable Commission Members:

I am a property owner in Pacific View Villa's complex adjacent to Lands End Apartments.

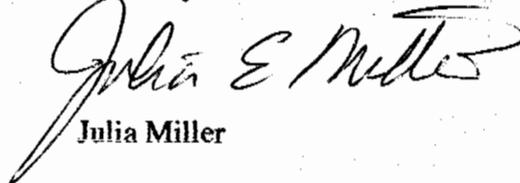
I am writing to you in opposition to construct a 260 square foot outdoor pool and expand an existing clubhouse and add five parking spaces to this apartment complex.

I am against this project for the following reasons:

- The erosion of the cliff is so precarious and puts adjoining properties at risk.
- The weather in Pacifica is also not suitable for an outdoor pool.
The Ritz Carlton Hotel a few miles south on the cliffs does not have an outdoor pool.
- The imposition into adjoining public space is not appropriate.
- The noise will carry and is not restricted.

Thank you for your consideration in denying this request.

Sincerely,



Julia Miller

408-739-8789 Home
408-221-3834 Cell

September 1, 2006

Lee T. White
104 Esplanade Ave. Apt. 115
Pacifica, CA 94044
(650) 557-4108

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COASTAL COMMISSION

California Coastal Commission
North Central Coast District Office
45 Fremont St., Ste. 2000
San Francisco, CA 94105-2219

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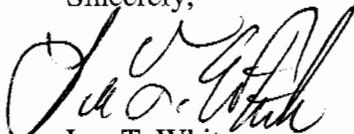
RE: Permit No. A-2-PAC-06-007

Dear Commissioners:

I fully support the staff recommendation to approve the above-named permit with conditions. In particular, I support the condition that requires the property owner to record a deed restriction incorporating the other conditions. Given the owner's record with regard to regulatory oversight, I believe the conditions set forth in the staff report are reasonable and necessary and should be adopted in their entirety to ensure compliance.

Thank you for considering my opinion and those of my fellow Land's End tenants.

Sincerely,



Lee T. White